



BEFORE THE  
DIVISION OF MEDICAL QUALITY  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition for Penalty Relief  
of:

STEVEN S. HERBETS, M.D.  
161 Avenida Santa Catalina  
La Habra, California 90631

Physician and Surgeon's  
Certificate No. G 39476,

Petitioner.

OAH No. N2006070057

**PROPOSED DECISION**

Administrative Law Judge Cheryl R. Tompkin, State of California, Office of Administrative Hearings, heard this matter on August 23, 2006, in Oakland, California.

David Carr, Deputy Attorney General, represented the Office of the Attorney General.

Petitioner Steven S. Herbets, M.D., appeared on his own behalf.

This matter was submitted on August 23, 2006.

**FACTUAL FINDINGS**

1. On June 18, 1979, the Medical Board of California (Board) issued Physician and Surgeon's Certificate Number G 39476 to Steven S. Herbets, M.D. (petitioner).
2. Effective January 16, 1997, petitioner's certificate was revoked pursuant to a decision following administrative hearing in Board Case No. 04-92-15797, OAH No. L9407003.

3. The Board found that disciplinary action<sup>1</sup> was warranted due to petitioner's unprofessional conduct as defined in Business and Professions Code sections 810 (knowing presentation of a false insurance claim), 2261 (preparing a false document related to the practice of medicine), 2234, subdivision (e) (acts of dishonesty or corruption related to the practice of medicine), 2264 (employing, aiding or abetting the unlicensed practice of medicine), 2271 (false or misleading advertising), 2242 (prescribing dangerous drugs without prior examination and medical indication), 725 (excessive prescribing of drugs or treatment), 2234, subdivision (b) (gross negligence) and 2234, subdivision (c) (repeated negligent acts). Petitioner was also found to have violated Health and Safety Code section 1795.12, subdivision (12) (failure to produce patient charts).

The Board decision revoking petitioner's certificate noted that petitioner had engaged in continuing, serious and pervasive violations of the Medical Practice Act from 1979 through December 1994, and that there was no reason to expect that conduct to change.<sup>2</sup>

---

<sup>1</sup> Disciplinary action was based on an Accusation signed by complainant Dixon Arnett, Executive Director of the Board, on March 25, 1994, and a First Supplemental Accusation signed by Arnett on March 9, 1995.

<sup>2</sup> The Board's decision summarized petitioner's violations as follows:

The record in its entirety supports the revocation of respondent's license. Certain elements are of particular note:

- (a) The serious nature of the established violations;
- (b) The continuing nature of violations, from the time respondent made his first application for hospital privileges in 1979 through his specialty certification application in December, 1994;
- (c) The pervasive nature of the violations: i.e., negligent and grossly negligent patient care, billing fraud, dishonesty, unlicensed physical therapy, harassment, poor record keeping, resale of sample drugs, false applications and failure to produce patient charts;
- (d) Respondent was already warned about bad record keeping, in the prior Board Decision in 1985 (Finding 150) and the La Habra Community Hospital discipline in 1982 (Finding 148), but there has been no change in his behavior. Furthermore, despite a prior 805 report about unprofessional conduct in using obscene language with a hospital employee in 1981 (Finding 156), respondent nevertheless persisted in his behavior; and
- (e) Despite respondent's testimony of his desire to change his life after surviving cancer in 1991, he continued several of his dishonest office practices into 1992, he harassed OUCH employees in 1992, and he lied on the specialty board certification application in December, 1994.

4. On November 20, 2001, petitioner filed a Petition for Penalty Relief with the Board requesting reinstatement of his revoked certificate. The Board granted the Petition and petitioner's certificate was reinstated on a probationary basis effective July 10, 2002. The Board decision granting reinstatement noted that (1) petitioner had gained important insights into the reasons behind the conduct that led to the loss of his medical license and had accepted responsibility for his actions, (2) petitioner's psychotherapist, whom petitioner began seeing in 1998, felt that petitioner's current psychological function would not prevent him from performing the duties of a physician, (3) petitioner had taken two courses (Medical Record Keeping and Physician Prescribing) through the Physician Assessment and Clinical Education (PACE) program at the University of California at San Diego School of Medicine, and had also taken additional courses designed to address concerns over his professional and personal ethics and keep his medical knowledge current, (4) two physicians were ready to assist petitioner in obtaining employment as a physician employee if his license were reinstated, and (5) petitioner had engaged in extensive charitable activities with four volunteer medical organizations since 1998. The Board found that petitioner had transformed and rehabilitated himself in the five years since the revocation of his license such that it would not be contrary to the public interest, health, safety or welfare to grant petitioner a probationary license, subject to specified terms and conditions. Petitioner was placed on five years of probation.

5. On July 15, 2004, petitioner filed a Petition for Penalty Relief with the Board requesting early termination of his probation. The Board denied the Petition effective February 24, 2005. The Board decision denying early termination noted that petitioner had made exceptional and exemplary efforts to prove he had changed, and that petitioner was substantially rehabilitated. The Board nevertheless expressed a lingering doubt about petitioner's character "due to the duration, extent and pervasiveness of the unethical conduct that brought about the revocation." It noted "the best evidence of changed character is conduct that demonstrates change of heart and habits over time." The Board also noted that there was no evidence of any effort by petitioner to identify individuals harmed, nor evidence of any effort by petitioner to acknowledge and make amends or restitution for any individual or collective harm to patients, insurers or fellow practitioners. The Board concluded that although petitioner was an excellent candidate for early termination of probation, more time was necessary for petitioner to prove his changes were "genuine and permanent in the setting of an actual return to practice." It noted that petitioner had only completed slightly more than two years of his five year probation, with much of the first year being devoted to satisfaction of the conditions precedent to a return to practice.

6. On March 2, 2006, petitioner filed the pending Petition for Penalty Relief seeking early termination of his probation. As of the August 23, 2006, hearing date on the petition, less than 11 months remained of petitioner's five-year probationary term.

---

There is no reason to expect any change in respondent's continued practice of deception and other violations of the Medical Practice Act if he was allowed to maintain his license even if under stringent terms of probation.

7. Petitioner is 54 years of age. In 1974 he earned a Bachelor's degree in Biology from St. Joseph's College in Philadelphia, Pennsylvania. He received his medical degree from Thomas Jefferson Medical College in 1978. Petitioner then completed a one year internship at Presbyterian Hospital of the Pacific in San Francisco, California. He opened a private family practice in La Habra, California in 1979. According to petitioner, becoming a physician had been a life-long dream and for many years he provided excellent care. But as his medical practice continued to expand, he slowly and insidiously lost sight of the humanitarian reasons that led him into the medical profession and abandoned his moral values to engage in conduct that reflected a "total abandonment of sound judgment." As a result, his medical license was revoked in 1997. The loss of petitioner's license devastated him and for a period of time he could not function. Ultimately, however, the loss of his license caused him to begin a period of personal introspection. In 1998 he began psychotherapy in order to understand why he had engaged in his inappropriate conduct. With the understanding gained from psychotherapy and introspection petitioner began to change his life. In addition to continued regular participation in psychotherapy, petitioner successfully completed PACE coursework and training, as well as numerous ethics and continuing medical education courses. He also made an extensive commitment to community service.

8. Petitioner's psychotherapy has primarily focused on the conduct that led to the loss of his medical license, his anxiety regarding a 1991 cancer diagnosis and his severe depression. Over time petitioner has come to realize that the loss of his license was due to his inappropriate conduct and was his own fault. In a November 7, 2001, report petitioner's psychotherapist, Alan Schramm, M.D., noted that prior to revocation of his license petitioner rationalized many of his inappropriate behaviors, having a belief that he was invincible and possibly not accountable to anyone. Following revocation of his license, petitioner hit bottom and was eventually able to accept responsibility for his conduct, including acknowledging that his conduct was reprehensible. Dr. Schramm felt petitioner exhibited appropriate insight into the factors that led to license revocation and that he exhibited good judgment in his post revocation years. Dr. Schramm opined that petitioner was safe to practice as a physician. On July 23, 2002, petitioner's former Board probation monitor advised him he was discharged from further psychotherapy evaluation. However, petitioner continues to participate in psychotherapy, although it is no longer required by the terms of his probation, because he believes it gives him insight and tools to better deal with day-to-day stress and disappointment and to stay focused on the positive.

9. Petitioner also notes that the PACE training and coursework, and the numerous continuing education courses he has completed, have focused on the deficiencies discussed in the Board's decision revoking his license, and that he has gained substantial insight and knowledge from taking these courses. As required by the decision reinstating his license on a probationary basis, petitioner successfully completed the PACE Clinical Training Program, consisting of 40 hours of intensive training in Family Medicine. On November 21, 2002, he took and successfully passed an oral-clinical examination. Although petitioner passed the oral examination, the examiners identified three areas for improvement.

Respondent promptly identified and completed continuing education courses designed to address these areas of deficiency. Petitioner also submitted evidence of completion of numerous continuing education courses, accumulating more than triple the yearly CME requirements for relicensure for the years 2003 to 2005. He has taken a Family Practice Refresher course sponsored by the University of Nebraska, and completed courses to become a Certified Medical Review Officer and a Qualified Substance Abuse Professional. Petitioner is currently helping to edit and revise a medical textbook entitled, "The Medical Review Officer's Manual – MROCC's Guide to Drug Testing, Third Edition." Since December 2003 petitioner has sat on the Board of the American Academy of Family Practice, and is currently on the event planning committee of the American College of Occupational and Environmental Medicine.

10. In addition, petitioner is involved in several community service projects, all of which he finds very rewarding. From June 1998 to the present petitioner has traveled to Mexico with four different medical organizations<sup>3</sup> devoted to delivering volunteers and supplies to remote Mexican clinics, and providing medical, dental and eye care to impoverished Mexican citizens. Petitioner was always very forthcoming with these organizations regarding his medical license problems and revocation. Prior to reinstatement of his medical license, petitioner assisted staff in various non-medical capacities. Following reinstatement of his license petitioner began treating patients. Petitioner is also a volunteer pilot for Angel Flight, an organization that arranges free transportation in private aircraft for needy individuals whose health care problems require long distance travel to health care facilities. Petitioner has flown about half a dozen flights to date. Petitioner additionally participates in several youth programs, including Boy Scouts of America and Stand Up for Kids, as well as charitable fundraising events.

11. In response to the Board's concern that petitioner had failed to acknowledge and make amends or restitution for any individual or collective harm to patients, insurers or fellow practitioners, petitioner sent out a letter to every person or organization that he felt might have been harmed by his actions. In "An Open Letter to My Patients and Others" petitioner acknowledged that his medical license had been revoked in 1997 for unacceptable billing practices, unacceptable record keeping and supervisory practices and medical practice standards that were below acceptable levels. He also noted the license had been reinstated in 2002 on a probationary basis, with conditions. Petitioner apologized for his past actions and conduct, and stated he sincerely regretted any damage or harm that may have resulted from his actions. Petitioner also asked for forgiveness, advised that he was seeking to have his license reinstated without restrictions and that he had recently been providing medical services to charitable groups. Petitioner provided a telephone number for those who wished to contact him.

12. Petitioner submitted numerous letters in support of his petition for early termination of probation. Stuart B. Hoffman, M.D., a board certified internist and the Chief

---

<sup>3</sup> The organizations are Flying Samaritans; The Flying Doctors of Mercy, Liga International Inc.; United Methodist Church, Volunteers in Mission; and Casa Clinica.

Medical Review Officer for Choice Point, monitored respondent's practice from April 1, 2004, to the present. During the monitoring period Hoffman observed that petitioner demonstrated a high level of competence and did not have any problems with his care or work duties. In a letter dated March 2, 2006, Hoffman writes that petitioner has been employed at Choice Point since April 2004 as a Medical Review Officer. During petitioner's employment Hoffman has been impressed with petitioner's "diligence, general fund of knowledge and enthusiastic approach to all of his work duties." Hoffman also notes that petitioner has exhibited integrity in his interaction with other staff physicians, support staff and specimen donors who have tested positive for substance abuse, and that petitioner's performance has been exemplary in all aspects of his work. Based upon his direct observation, supervision and knowledge of petitioner and his work, Hoffman recommends that petitioner's probation be lifted and his full license privileges restored.

Soledad Lee, M.D., is an internal medicine physician who has known petitioner for over 20 years. She was petitioner's practice monitor from April 1, 2003, to June 30, 2003. In letters dated June 30, 2004, and March 6, 2006, Lee writes that petitioner worked in her office for a short time and was an excellent physician, with impressive skills for care and treatment of patients. Lee offered petitioner a full-time position but her liability insurer would only agree to cover petitioner for short periods of time (locums coverage) while he was on probation. Therefore, petitioner was unable to work at her office on a permanent or long term basis. In both of her letters Lee urges the Board to permit petitioner to practice without restrictions.

From July 1, 2004, through December 31, 2004, and during the first quarter of 2005, Surya M. Reddy, M.D., monitored petitioner. Reddy felt petitioner demonstrated a high level of competence in performing his duties and Surya saw no evidence of substandard practice or problems with care rendered by petitioner.

Emile G. Shenouda, M.D., monitored petitioner from October 1, 2003, through February 6, 2004. Shenouda felt petitioner demonstrated a high level of competence in performing his duties and Shenouda saw no evidence of substandard practice or problems with care rendered by petitioner.

Richard E. Huges, M.D., monitored petitioner from July 1, 2003, through September 30, 2003. Huges felt petitioner demonstrated a high level of competence in performing his duties and Huges saw no evidence of substandard practice or problems with care rendered by petitioner.

In a letter dated July 9, 2004, James E. Ott, Executive Director of Liga International, Flying Doctors of Mercy, states petitioner has been an active participant in Liga since 1998, and has made regular flights with the group in his own plane. Ott also notes that petitioner has treated patients, provided administrative support, recruited and oriented fellow physicians, been involved in fundraising activities and currently serves as Liga's Medical Director and Physician Coordinator. Ott opines petitioner's "humanitarian efforts have and

continue to be second to none in our organization," and that petitioner should be granted early termination of probation

In a June 29, 2004, letter Robert Schumacher, President of Flying Samaritans, Orange County Chapter, states that he supports termination of petitioner's probation. Petitioner has been volunteering with Flying Samaritans since 1998. Schumacher has found petitioner to be "a superlative model of outstanding moral character" and "an asset and help" to Flying Samaritans.

In an August 17, 2001, letter, community volunteer Cheryl Cooley urges early termination of petitioner's probation. Cooley notes that she worked closely with petitioner through Cub Scouts for 3-4 years coordinating activities for young boys. She observed that petitioner demonstrated enormous leadership qualities, honesty, sincerity and integrity, and that he was well respected within the Cub Scout organization.

In an August 14, 2001, letter R. Michael Hartman, Vice President of Operations of Pacific Health Corporation, opines that it would be appropriate to terminate petitioner's probation. Hartman has known petitioner for eleven years. He notes that during the time petitioner was practicing medicine petitioner was respected and loved by his patients, had a reputation as an excellent physician and was highly regarded in the medical community. Hartman feels petitioner's misconduct was out of character and would never occur again. He expresses a willingness to assist petitioner in finding a position as a physician employee.

13. Petitioner has complied with all the terms of his probation. He seeks early termination of his probation because his probationary status has made it very difficult for him to practice medicine. The conditions of petitioner's probation prohibit him from engaging in solo practice, limit his clinical medical practice to 40 hours per week, prohibit him from being involved in the financial aspects of medical practice, require that his practice be monitored by another physician and require him to carry medical malpractice insurance at all times. These practice restrictions have been an obstacle to petitioner gaining full-time, or even part-time, employment as a physician.<sup>4</sup>

Petitioner explains that because he is on probation, he cannot obtain malpractice insurance at an affordable rate. He has been denied malpractice insurance by all preferred providers. Even if he could get malpractice insurance at a non-preferred (inflated) rate, he would have to work in order to pay for the insurance. He cannot work for himself, and would therefore have to work for a group. In a group practice, all members of the group must be covered under the same insurance policy. The insurers of most of the groups to which petitioner has applied will not insure him because he is on probation. Several groups

---

<sup>4</sup> Petitioner submitted letters from several physician recruitment firms. The letters indicate that due to petitioner's probationary status some medical groups and individual physicians would not consider him for employment, and those who would could not obtain malpractice insurance with their malpractice carrier. Other practice groups were concerned petitioner would not be able to obtain hospital privileges due to his probationary status. Petitioner also submitted letters from physicians who would consider him for employment if his probationary status were to be terminated.

require that members have hospital privileges so the members can treat managed care patients. Petitioner's ability to obtain hospital privileges is restricted because he is on probation. Thus, petitioner has "only been able to work on a part-time, extremely fluid or locum tenens basis."

Petitioner feels that he has demonstrated his rehabilitation and fitness to resume unrestricted practice through his compliance with all terms and conditions of probation, completion of training and numerous continuing education courses beyond what was required by his probation and his extensive humanitarian efforts. Also, as a result of the rehabilitative process, petitioner feels that he is now a better medical practitioner. His knowledge of billing practices, his medical record keeping skills and his understanding of medical/legal issues is much stronger than previously, and through the PACE clinical training program and continuing medical education coursework his practice skills and knowledge have been greatly enhanced. In addition, petitioner has gained personal insight and understanding regarding what led to his inappropriate conduct over 10 years ago, and he feels he has acquired tools that will enable him not to repeat the conduct. Petitioner asserts that he is currently a responsible, competent, conscientious and safe practitioner who can be trusted to provide high quality medical care, and that his probation should be terminated.

14. The Board's probation monitor does not oppose petitioner's petition for termination of probation.

### LEGAL CONCLUSIONS

1. Business and Professions Code section 2307 authorizes a person who has been placed on probation to petition the Division of Medical Quality for modification of penalty, including termination of probation. It further provides:

... the administrative law judge hearing the petition may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability.


2. After considering all of the evidence, it is determined that good cause for termination of probation exists by reason of the matters set forth in Findings 8 through 14. Petitioner has demonstrated that he is rehabilitated and can safely practice medicine without risk to public health and safety. In this regard, it is noted that petitioner has accepted responsibility for his actions and has been diligent in complying with the terms and conditions of his probation, as reported by numerous professional colleagues. He has established an excellent reputation in the professional community as a result of his medical skills and extensive volunteer humanitarian activities. He has also taken numerous

continuing education courses related to ethics and family medicine. Petitioner's conduct indicates that he is committed to a medical practice that is consistent with the applicable standards of care, and he has shown success over a substantial period of time. Early termination of his probationary period is therefore warranted.

ORDER

The Petition for Penalty Relief of Steven S. Herbets, M.D., for early termination of probation is granted. Probation shall terminate upon the effective date of this decision.

DATED: 9/12/06

  
CHERYL R. FOMPKIN  
Administrative Law Judge  
Office of Administrative Hearings